Supreme Court, U.S.
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No. 97-950

In The

Supreme Court of the United States

October Term, 1997

CELINDAH J. GRIER,

Petitioner,

vs.

TITAN CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT, TITAN CORPORATION'S, OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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10 pp

QUESTIONS PRESENTED FOR REVIEW

1. **Punitive Damages:** Did Judge Ellis, the trial judge, correctly conclude that Ms. Grier failed to produce legally sufficient evidence from which the jury could find that Titan acted with reckless disregard of Ms. Grier's federally protected rights?

2. **Constructive Discharge**: Did Judge Ellis, the trial judge, correctly apply the legal standard of objective intolerability in concluding that Ms. Grier failed to prove an essential element of her claim for constructive discharge?

DISCLOSURE STATEMENT
REQUIRED BY RULE 29.6

Titan Corporation identifies the following subsidiaries:

1. Diversified Control Systems, Inc.
2. Eldyne, Inc.
3. Federal Services, Inc.
4. Pulse Sciences, Inc.
5. Titan Environmental Corporation
6. Linkabit Wireless, Inc.
7. Tomotherapeutics, Inc.
8. Unidyne Corporation
9. ServNow NetTechnologies, Inc.
10. Titan Broadband Communications Corporation
11. Titan Software Systems Corporation
12. Linkabit Wireless Limited
13. Titan Information Technologies Corporation

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STATEMENT OF THE CASE

Ms. Grier Improperly Relies Upon Facts Which Occurred Before September 29, 1994, Continues to Claim That Titan Did Not Address "Her Issues" the Way She Desired, And Misstates the Record Facts.

1. Ms. Grier Improperly Relies Upon Facts Which Occurred Before September 29, 1994.

Because the jury found no adverse employment actions against Ms. Grier prior to September 29, 1994,[1] the facts pertinent to this Petition occurred between September 29, 1994, and November 4, 1994. Ms. Grier did not appeal the jury's finding of no adverse employment actions prior to September 29, 1994.[2] Despite the juries' finding of no adverse employment actions against Ms. Grier prior to September 29, 1994, Ms. Grier relies upon facts that occurred before September 29, 1994, to support her argument that Titan acted with "reckless indifference" to her federally protected rights, Petition For A Writ of Certiorari, ("Petition") at 7, and that Ms. Grier was given "no choice" but to resign, Petition at 12-13.

The "bullshit" comment, upon which Ms. Grier chiefly relies to support her contention that the evidence supports reckless indifference, Petition at 3 and 7, actually occurred in May or June

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[1] The jury answered "No" to the question, "Do you find, by a preponderance of the evidence, that defendant took adverse employment actions against plaintiff between August 4, 1994, and September 28, 1994, and that plaintiff's protected activity was the determinative factor in defendant's decision to take any retaliatory adverse employment actions against plaintiff during this period? (J.A. 6611) References to the record are to the Joint Appendix Filed with the Fourth Circuit Court of Appeals.

[2] Statement of Issues from Opening Brief of Celindah Grier, United States Court of Appeals for the Fourth Circuit, Record No. 97-1167 and Record No. 97-1168, a copy of which is attached as Appendix A.

1994, (J.A. 04855-04356), Titan's Opposition to Petition For A Writ of Certiorari ("Titan's Opposition"), Appendix B at 9a - 10a. May or June 1994 is not only prior to September 29, 1994, but is prior to August 4, 1994, the date before which Judge Eillis ruled Ms. Grier could not attempt to show any acts of retaliation. November 20, 1996, Order, ¶¶ e.1. and 2.. (J.A. 04711- 04715), Titan's Opposition, Appendix C at 46a - 47a. And, to add insult to injury, Ms. Grier's counsel, herself, argued in closing that the "bullshit" remark was made in May or June 1994. (J.A. 06484-06485), Titan's Opposition, Appendix B at 40a - 42a.

The entire fourth paragraph of Ms. Grier's "Factual Predicates" refers to facts that occurred prior to September 29, 1994. The assertion that Ms. Grier "... was relieved of her management responsibilities," Petition at 2, is based upon testimony about an organizational chart first seen by Ms. Grier when she returned to work at Titan after medical leave. (J.A. 04880-04882), Titan's Opposition, Appendix B at 17a - 19a. Grier left Titan on disability in the month of June 1994 (J.A. 01357) and returned on August 8, 1994 (J.A. 01164).

Ms. Grier's testimony at J.A. 04890, J.A. 04896, and J.A. 04993, Titan's Opposition, Appendix B at 19a - 20a, 20a - 21a and 26a, (*See* J.A. 04987 - J.A. 04993, Titan's opposition, Appendix B at 22a - 26a for the context of Ms. Grier's testimony at J.A. 04993), which are referred to in paragraph 4 of Ms. Grier's "Factual Predicates", all relate to discussions Ms. Grier had with Walker in August, 1994.

2. **Ms. Grier Continues to Claim That Titan Did Not Address "Her Issues" the Way She Desired.**

Judge Ellis first rejected Ms. Grier's failure to address theory on November 20, 1996, in his ruling granting Titan's Motion in Limine to prevent Ms. Grier from arguing the validity of her underlying discrimination claims. (J.A. 04713 at ¶ e.3.), Titan's Opposition, Appendix C at 47a.

Judge Ellis sustained objections to Ms. Grier's reference to Titan's failure to address "her issues" and the validity of complaints of discrimination during Ms. Grier's opening statement. (J.A. 04729-04730; J.A. 04789-04793; J.A. 04814-04816), Titan's Opposition, Appendix B at 2a - 3a; 3a - 7a; 7a - 9a.

Judge Ellis continued to rule throughout the trial that the validity of Ms. Grier's complaints was irrelevant despite Ms. Grier's concerted effort to make Titan's alleged failure to address Ms. Grier's "issues" the focal point of her case. (J.A. 04870-04878; J.A. 05066-05068; J.A. 05466-05467), Titan's Opposition, Appendix B at 10a - 17a; 31a - 33a; 37a - 38a.

Judge Ellis instructed the jury that the validity or invalidity of Ms. Grier complaints was not relevant , (J.A. 06577-06578), Titan's Opposition, Appendix B at 42a - 43a, and ruled in his December 24, 1996, Order that Titan's failure to address Ms. Grier's complaints of discrimination could not create objective intolerability. Petition, Appendix C at 26a.

By her assertion "After repeated attempts to have Titan address its pervasive discrimination against women, Titan's top managers successfully plotted to force Ms. Grier's resignation,"[3] Ms. Grier continues to raise, improperly, the issue of how women at Titan were treated,[4] at this late date.

Ms. Grier's reference to in her Statement of Facts, Petition at 3, to her attempt to discuss one of her charts and Mr. Nelson's response during the September 29, 1994, telephone conference call, is to testimony to which Judge Ellis sustained Titan's counsel objection by ruling that the refusal to address issues could not be the

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[3] Petition at 2. Grier presented no evidence of a plot or conspiracy against her and did not argue a plot or conspiracy; therefore, this statement is pure hyperbole and unsupported by the record.

[4] "THE COURT: Let me say further at this point, Ms. Grier's claim of unequal treatment of women is not at issue in this case." (J.A. 04791-04792), Titan's Opposition, Appendix B at 5a - 6a.

basis for constructive discharge. (J.A. 05052-05057), Titan's Opposition, Appendix B at 26a - 31a.

Likewise Judge Ellis sustained Titan's objection, (J.A. 05067-05068) Titan's Opposition, Appendix B at 32a - 33a, to Ms. Grier's testimony that she responded to "this indifference" by asserting that "... her situation 'had been intolerable'...", Petition at 3.

3. **Ms. Grier Misstates the Record Facts.**

In the third paragraph of her "Factual Predicates", Ms. Grier misrepresents Mr. Monsma's testimony of what he heard Ms. Sundin say as Ms. Sundin's testimony and misrepresents Ms. Sundin's testimony that Ms. Grier was trying to make issues where none existed. (J.A. 05451), Titan's Opposition, Appendix B at 36a, (J.A. 05480-05481), Titan's Opposition, Appendix B at 38a - 40a.

Ms. Grier's assertion, Petition at 3-4, that her return as Deputy General Manager would be a hollow position misrepresents a quote from the record which does not relate to any duties she might have as Deputy General Manager, but to the AFCIMS project and what her role would not be on the project. (J.A. 05099-05100), Titan's Opposition, Appendix B at 33a - 35a.

The "I have no idea what Ms. Grier would be doing as Deputy General Manger" statement Ms. Grier attributes to Mr. Knauf, Petition at 4, misrepresents Mr. Knauf's answer to the question "What would Celindah Grier **have been doing for the UEP** if she returned -- or continued as deputy general manager?" (J.A. 05860) Titan's Opposition, Appendix B at 40a.

4. **Titan's Statement of Facts Relevant to This Court's Consideration.**

The record facts between September 29, 1994, and November 4, 1994, show that Ms. Grier knew she could continue to work at Titan, (J.A. 05127); that Ms. Grier chose to terminate her

employment with Titan on November 4, 1994, after applying for a job with the James Martin Company on October 20, 1994, (J.A. 04668), after receiving a job offer from the James Martin Company dated October 28, 1994, (J.A. 04671, J.A. 05445), and after accepting the job at the end of October 1994 (J.A. 04671).[5]

The record facts also show that Ms. Grier worked full time after September 29, 1994, until she left Titan on November 4, 1994. Between September 26 and 30, 1994, Ms. Grier billed 29 hours to AFCIMS and 14 hours to discretionary overhead. (Titan Exhibit 9, J.A. 04697-04705; Grier Testimony, J.A. 05152, 05172-05176).[6] Grier was out on disability between October 3 and 7. (*Id.*) After the first week in October, Ms. Grier worked at home and at the office, so she could concentrate on the investigation being performed by Titan into her complaints. (J.A. 05202, J.A. 05205-05206). Mr. Knauf, CEO of Titan East, gave Ms. Grier a billing number designated "special project" which she billed to until she resigned. (J.A. 05078, J.A. 05784-05785).

5. **Judge Ellis Submitted the Issue of Constructive Discharge and Punitive Damages to the Jury Despite His Conviction That No Evidence Supported Either.**

Judge Ellis submitted constructive discharge and punitive damages to the jury, even though Judge Ellis believed Ms. Grier's evidence was legally insufficient, in order to avoid a retrial if the Fourth Circuit disagreed with Judge Ellis as to the proper standards.

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[5] Judge Ellis found "Plaintiff admits that she was never asked to leave defendant's employ and, indeed, further admits that defendant's president sought to induce her to stay by offering her a position working directly for him. Nonetheless, plaintiff left defendant, accepting a job offer she had received from another corporation prior to her resignation. December 24, 1994, Order of the United States District Court for the Eastern District of Virginia, Petition, Appendix C at 23a.

[6] *See* also Grier's Exhibit 85, which was not made part of the Appendix, but which was admitted as a joint exhibit. (J.A. 03074).

(J.A. 06470-06473, 06605, 06637)(Opinion of the United States Court of Appeals for the Fourth Circuit, Petition, Appendix A at 5a-6a)(December 24, 1994, Order of the United States District Court for the Eastern District of Virginia, Petition, Appendix C.)

REASONS FOR DENYING THE WRIT

1. **The Court is Ask to Resolve Factual Disputes Already Resolved by Judge Ellis Whose Factual Findings the Fourth Circuit Affirmed.**

a. Ms. Grier asks this Court to reconsider and resolve facts in her favor which Judge Ellis, the trial judge, found were not legally sufficient to support Ms. Grier's claim of constructive discharge and punitive damages; and

b. Ms. Grier's argument is dependent upon facts which she misstates and which are irrelevant based upon the jury's finding of no adverse employment actions against her prior to September 29, 1994.

2. **There Is No Real Conflict Between the Circuit Courts of Appeal Regarding the Requirement of Proof of Malice or Reckless Indifference to Support Punitive Damages.**

3. **Both Judge Ellis and the Fourth Circuit Court of Appeals Correctly Applied the Objective Intolerability Standard to the Evidence of the Treatment of Ms. Grier Between September 29, 1994, and November 4, 1994, When She Resigned.**

ARGUMENT IN SUPPORT OF DENYING THE WRIT

1. The Court is Ask to Resolve Factual Disputes Already Resolved by Judge Ellis Whose Factual Findings the Fourth Circuit Affirmed.

When examined, Ms. Grier's arguments on punitive damages and constructive discharge are based upon facts resolved against her by both Judge Ellis and the United States Court of Appeals for the Fourth Circuit. Ms. Grier admits that there must be proof of reckless indifference to support punitive damages and proof of objective intolerability. Ms. Grier simply disagrees with Judge Ellis' thorough analysis of the evidence in his December 24, 1994, Opinion, Petition, Appendix C. Ms. Grier relies upon irrelevant facts and misstated facts in an effort to convince this Court to re-examine the facts and come to a conclusion opposite from the conclusion reached by Judge Ellis and Judges Luttig, Williams, and Anderson, who constituted the Fourth Circuit panel.

For example, the facts stated by Ms. Grier in her Petition at 12-13 in support of her argument that she was given no choice but to resign were closely examined by Judge Ellis and rejected because they occurred before September 29, 1994, or they were contradicted by credible evidence, or they were contrary to admissions made by Ms. Grier. December 24, 1994, Order, Petition, Appendix C at 22a-28a.

2. There Is No Real Conflict Between the Circuit Courts of Appeal Regarding the Requirement of Proof of Malice or Reckless Indifference to Support Punitive Damages.

No court has held that whenever a plaintiff proves intentional discrimination, the plaintiff is entitled to have the jury consider punitive damages because proof of intentional discrimination **always** equals proof of reckless disregard for the

plaintiff's federally protected rights. Yet, this is the standard that Ms. Grier urges.

This Court has held in an action under 42 U.S.C. § 1983 that where the underlying standard of liability for compensatory damages is recklessness, it is appropriate for the jury to consider punitive damages based upon the same standard. *Smith v. Wade*, 461 U.S. 30, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983). But, this Court's holding in *Smith v. Wade* does not establish the new formula for punitive damages urged by Ms. Grier that in **every** case where there is prima facie proof of intentional discrimination, the trial court no longer has the duty to weigh the evidence under FED. R. CIV. P. 50.

Courts interpreting *Smith v. Wade* have held that proof of intentional discrimination **may** support an award of punitive damages. *See Barbour v. Merrill*, 48 F.3d 1270, 1277 (D.C. Cir. 1995), *cert. granted*, __ U.S. __ , 116 S.Ct. 805, 133 L.Ed.2d 752, *cert. dismissed*, __ U.S. __ , 116 S.Ct. 1037, 134 L.Ed.2d 113 (1996) (voluntary settlement by parties)(In a section 1991 racial discrimination case proof of the discrimination **may** also serve to satisfy the requirement to prove callous of reckless disregard of the plaintiff's federally protected rights). However, none of the cases cited by Ms. Grier support the new formula which she advocates. In each of them, the appellate court found the evidence legally sufficient to support a finding of punitive damages.

In *Williamson v. Handy Button Machine Co.*, 817 F.2d 1290 (7th Cir. 1987), the unobjected to jury instruction on punitive damages did not mention malice or reckless indifference.[7] The Seventh Circuit described the jury instruction as "... the equivalent of telling them to award punitive damages 'if you want.'" and found

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[7] *Williamson v. Handy Button Machine Co.*, 817 F.2d 1290, 1296 (7th Cir. 1987).

that evidence of ten years of racial discrimination supported punitive damages under the instruction.[8]

In *Vasbinder v. Ambach*, 926 F.2d 1333 (2nd Cir. 1991), the Court found the instructions regarding compensatory and punitive damages "... did not purport to advise the jury that the threshold for an award of compensatory damages was the same as that for an award of punitive damages."[9] The Second Circuit also found record evidence well in excess of that necessary to support a finding of liability.[10]

In *Rowlett v. Anheuser-Busch, Inc.*, 832 F.2d 194, n.5 204-205 (1st Cir. 1987), the trial court instructed the jury: "Where a plaintiff in a racial discrimination case establishes the elements of malice, or callous and reckless indifference by a preponderance of the evidence, then a jury is allowed in its discretion to assess punitive damages ..." This instruction follows *Smith v. Wade* and like *Smith v. Wade* did not eliminate a trial judge's duty to determine on a FED. R. CIV. P. 50 motion whether there was a " ... legally sufficient evidentiary basis for a reasonable jury ... to find a reckless disregard of federally protected rights."

In *Merriweather v. Family Dollar Store of Indiana, Inc.*, 103 F.3d 576, 581 (7th Cir. 1996), the trial court specifically found that Family Dollar Store acted with reckless indifference to Merriweather's federally protected rights because "... Family Dollar deliberately gave false reasons for firing Merriweather."

The March 21, 1997, ruling on punitive damages in *Kolstad v. American Dental Association*, 108 F.3d 1431 (D.C. Cir. 1997), *reh'g in banc granted*, 108 F.3d. 1446 (D.C. Cir. 1997), upon

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[8] *Id.*

[9] *Vasbinder v. Ambach*, 926 F.2d 1333, 1343 (2nd Cir. 1991)

[10] *Id.*

which Ms. Grier relies on heavily, was vacated May 28, 1997, for a in banc rehearing on the issue of punitive damages, for which there has yet to be a published opinion. However, even the March 21, 1997, ruling cautioned that not every case of intentional discrimination would support an award of punitive damages and that "... the district court may need to assess separately whether evidence sufficient to support a finding of intentional discrimination also suffices to instruct the jury on punitive damages."[11]

While in some cases the state of mind necessary for liability may also establish the state of mind necessary to establish reckless indifference to federally protected rights, Grier's case against Titan is not one of them. In his December 24, 1996, Order, Judge Ellis examined Grier's evidence of reckless disregard closely and found it legally insufficient to establish that Titan's intent to retaliate against her amounted to reckless disregard of Ms. Grier's federal protected rights. Petition, Appendix C at 29a-30a.

The cases decided since *Smith v. Wade* consistently hold that evidence of intentional discrimination **may** also be legally sufficient as evidence of the reckless indifference that requires submission of punitive damages to a jury. But, none of cases hold that evidence of intentional discrimination is **always** legally sufficient as evidence of the reckless indifference. Rather, as the Fourth Circuit recently ruled in *Harris v. L & L Wings, Incorporated*, __ F.3d __, 1997 WL 786926 (4th Cir. December 24, 1997):

> In order to reach the jury on the issue of punitive damages, a plaintiff generally must make a "heightened showing" of the culpable state of mind of the employer, not just of the harasser.

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[11] *Kolstad v. American Dental Association*, 108 F.3d 1431, 1438-1439 (D.C. Cir. 1997).

There is no reason for this Court to review the facts heard and reviewed by Judge Ellis and reviewed by the Fourth Circuit, both of which concluded Ms. Grier's evidence failed to establish the required culpable state of mind for reckless disregard of Ms. Grier's federally protected rights.

3. Both Judge Ellis and the Fourth Circuit Correctly Applied the Objective Intolerability Standard to the Evidence of the Treatment of Ms. Grier Between September 29, 1994, and November 4, 1994, When She Resigned.

Ms. Grier's real complaint is not that the Fourth Circuit has adopted an impossible standard, but that her evidence showed that she had "no choice but to resign." Petition at 12-13. Judge Elllis disagreed. The Fourth Circuit disagreed.

The Fourth Circuit did not find, as Ms. Grier claims, that she "... had a 'choice not to resign' ...",[12] which choice Ms. Grier asserts the evidence shows was meaningless. Rather, the Fourth Circuit affirmed Judge Ellis' findings that Ms. Grier admitted "... that she was never asked to leave defendant's employ, and, indeed, further admits that defendant's president sought to induce her to stay by offering her a position working directly for him. Nonetheless, plaintiff left defendant, accepting a job offer she had received from another corporation prior to her resignation."[13]

Ms. Grier wants this Court to review the record and rule that Judge Ellis, who heard the evidence, erroneously granted Titan's Motion for Judgment as a matter of law. Judge Ellis analyzed Ms. Grier's evidence of constructive discharge in great detail. Judge Ellis quite properly concluded that: (1) Ms. Grier's own time sheets and the availability of other work refuted Ms. Grier's denial of work

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[12]Petition at 15.

[13]December 24, 1996, Order, Petition, Appendix C at 23a.

contention;[14] (2) Ms. Grier's chief reason for leaving Titan, Titan's failure to address Ms. Grier's issues to her satisfaction, could not create objective intolerability;[15] and Ms. Grier's feelings of isolation, Ms. Grier's feelings of being unfairly criticized and Ms. Grier's dissatisfaction with work assignments did not create objective intolerability.[16] Similarly, the court in *Blistein v. St. John's College*, 74 F.3d 1459, 1468-1469 (4th Cir. 1996), found that Blistein " ... utterly failed to proffer evidence that he was compelled to ..." to resign.

CONCLUSION

Ms. Grier's Petition should be denied. Ms. Grier simply disagrees with the factual findings made by Judge Ellis. Ms. Grier asks this Court to review Judge Ellis' factual findings and to conclude that Judge Ellis wrongly found that Ms. Grier's evidence failed to establish a legally sufficient basis for punitive damages and objective intolerability.

Dated: January 8, 1998

Respectfully submitted,

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[14]December 24, 1996, Order, Petition, Appendix C, at 24a.

[15]*Id.*

[16]*Id.*

APPENDIX A - EXCERPT FROM THE OPENING BRIEF OF CELINDAH GRIER, U. S. COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MARCH 19, 1997.

STATEMENT OF ISSUES

Given the procedural posture of this case, this appeal presents an unusually large number of issues:

1. Did the district court err in granting the defendant's motion for a new trial, after the properly-instructed first jury found in favor of Ms. Grier on her retaliation and construction discharge claims, awarding $635,000 in compensatory and punitive damages?

2. Did the district court properly conclude, based on incorrect dictum from an unpublished opinion of this Court, that there is no common law cause of action under Virginia law for constructive discharge?

3. Did the district court properly grant the defendant's motion for judgment as a matter of law on Ms. Grier's constructive discharge claims, after a second jury found in her favor on these claims?

4. Did the district court properly grant the defendant's motion for judgment as a matter of law on Ms. Grier's claim for punitive damages after a properly-instructed second jury found in her favor, awarding $800,000 in punitive damages?

5. Did the district court abuse its discretion in excluding probative evidence from the second trial, and in instructing the jury at the second trial?

6. Did the district court properly grant summary judgment in favor of the defendant on Ms. Grier's hostile environment claim of gender-based discrimination?

APPENDIX B - EXCERPTS FROM THE TRANSCRIPTS OF THE TRIAL: NOVEMBER 25, 1996 - DECEMBER 4, 1996.

November 25, 1996, Page 12, Joint Appendix 04729

THE COURT: "Gender" strictly does not generally refer to male and female. The proper way is sex discrimination.

ATTORNEY EVANS: I have no objection, your Honor.

THE COURT: I will explain as to gender.

ATTORNEY EVANS: Correct, your Honor.

THE COURT: I might.

So, you are saying, Ms. Bredehoft, that in the case of -- she helped others make sex discrimination claims; that wouldn't be gender, that would be sex discrimination.

ATTORNEY BREDEHOFT: No, your Honor. My concern there is to take out the "sex" altogether, because the discrimination was of a broader context than gender discrimination, than the other --

THE COURT: I am going to tell them, also, early in the case that the underlying validity of the claim, her claim or anyone else's claim, is not an issue here.

ATTORNEY BREDEHOFT: Yes, I understand that your Honor is going to do that. I just wanted to be accurate.

THE COURT: So, tell me again now, you would prefer that it say "gender discrimination" rather than

November 25, 1996, Page 13, Joint Appendix 04730

"sex discrimination"?

ATTORNEY BREDEHOFT: For Ms. Grier; and then take out the word "sex" altogether on the second, and just "discrimination."

I just want to be precise.

Appendix B

THE COURT: All right.

ATTORNEY BREDEHOFT: Thank you, your Honor.

ATTORNEY EVANS: Your Honor, I am only aware there was one other, and it shouldn't be "and others." We are only talking about the incident that allegedly occurred on the 24th of September.

And may I also suggest, your Honor, that you consider explaining to the jury prior to opening statements the significance of August 4th?

THE COURT: No, I am not going to do that before opening statements -- well, I will consider that. I will consider that. I didn't do it before, and I ended up having to do it. I will think about that.

What was the second thing, Ms. Bredehoft, that you had?

ATTORNEY BREDEHOFT: Those were the two.

And, your Honor, just so we are clear, I don't agree that we start with the complaints of discrimination from September 29th.

I intend to start earlier, and I think I

November 25, 1996, Page 72, Joint Appendix 04789

ATTORNEY EVANS: Your Honor --

ATTORNEY BREDEHOFT: -- Celindah Grier made mention --

THE COURT: Yes?

ATTORNEY EVANS: This has been already ruled on by yourself, that what happened in June of '93 is irrelevant.

ATTORNEY BREDEHOFT: I don't agree, your Honor.

THE COURT: Well, there cannot be -- evidence of retaliation, if any, must postdate August 4th. And to that extent, the objection is sustained.

The objection is overruled to the extent we

are talking about protected activity that will be factually connected.

Don't nod or shake your head. Simply listen.

That's the Court's ruling. Proceed.

ATTORNEY BREDEHOFT: Thank you.

THE COURT: And I will instruct the jury further on that regard.

ATTORNEY BREDEHOFT: In June of 19 --

THE COURT: In fact, let me tell the jury right now.

For reasons that you don't need to be

November 25, 1996, Page 73, Joint Appendix 04790

concerned about, the retaliation that is pertinent in this case, alleged by the plaintiff, has to be after August 4th.

The plaintiff also has to show protected activity, that is, activity that would be protected by Title 7, as I'll instruct you later. That may predate August 4th.

But you will remember, I told you that this is a case about retaliation. The plaintiff must show that the defendant deliberately retaliated against her for taking protected activity.

So, the only protected activity that would be relevant before August 4th would be that which might conceivably be found by a fact finder to be causing retaliation. That's the only -- that's the Court's ruling.

That comports with your recollection, doesn't it, Mr. Evans?

ATTORNEY EVANS: Yes, your Honor. Yes.

THE COURT: All right. Let's proceed in that regard.

Appendix B

However, when individuals pieces of evidence are offered, if you find or feel they are irrelevant because of the absence of causation, you may object and I will consider the matter, perhaps at the bench.

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Remember, what Mr. Evans or Ms. Bredehoft say to you now in opening statements is not evidence.

Remember --

ATTORNEY BREDEHOFT: Thank you, your Honor.

THE COURT: -- it shouldn't be argument either, but lawyers sometimes get carried away a bit. But I am sure Ms. Bredehoft and Mr. Evans will take care not to.

ATTORNEY BREDEHOFT: In June of 1993, Celindah Grier put together a briefing, is what they called it, and that's a series of slides -- in other words, eight a half by eleven pieces of paper with significant points on each page, some of them bold, some of them different sizes, to get the attention of the audience, to make presentations.

Celindah Grier gave a lot of thought and put together a presentation, a briefing, on the subject, which was women at Titan and how to avoid discrimination of women at Titan --

THE COURT: Let me say further at this point, Ms. Grier's claim of unequal treatment of women is not at issue in this case.

The validity or invalidity of that claim is not for you to consider. The only thing that is relevant is whether she engaged in protected activity. So let's

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keep it at that.

ATTORNEY BREDEHOFT: The briefing included specific itemizations --

THE COURT: That is precisely what I just gave the instruction for. It doesn't matter what it involved.

ATTORNEY BREDEHOFT: Okay.

THE COURT: That's already -- so you have to keep that to one side, and just say that she made complaints. And that's the only evidence that is going to be permitted.

We are not going into the validity or detail or invalidity or lack of detail of any complaints she may have about gender discrimination. All that's relevant is that she made such complaints, and then, was there retaliation factually connected to that, and is the retaliation of a nature prescribed by law.

Then you also claim that she was constructively discharged as a retaliation, and that, as I have already instructed the jury, is where you have to show the conditions were so intolerable, objectively, that a reasonable person would have had no choice but to leave. That's the case.

Let's proceed.

ATTORNEY BREDEHOFT: The June 1993 briefing

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was made to Mr. Knauf, then the president of Titan East, Mr. Carlson, then the chief executive operating officer of Titan East, and Bonnie Good, the director of human resources at that time.

The briefing was then sent to Marsh Nelson. That's the general counsel out at Titan Corporation. And Celindah Grier tried to follow up with Marsh Nelson on that, and he did not return her phone calls.

The next time Celindah Grier made a specific

complaint of discrimination involved her, not just women in general at the company.

That was in August of 1993. She made a briefing on that occasion -- it was supposed to be to Ed Knauf, who couldn't make it, but it also was made to Paul Carlson --

THE COURT: Did I mishear you? You are talking about '93?

ATTORNEY BREDEHOFT: Yes, sir. I believe we will be able to connect these up, your Honor.

THE COURT: I will hear you at the Rule 50 stage on this, and I will rule on it at that time.

ATTORNEY EVANS: If I may state for the record, I think we have had a ruling on this before, and I just ask --

THE COURT: I ruled before that she could

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it takes to explain what is going on. Then he turns it over to Cheryl Barr.

Now, the testimony will be that Cheryl Barr does not want to investigate what Celindah Grier has been going through in terms of Allen VanDeventer's treatment of her and, therefore, Mike Walker's agreeing with it or refusing to take any action about it.

Instead, what they want to talk about is only money. That's the only issue to them. They want to talk about supplemental compensation and the MBO and the UEP.

And then Celindah Grier sends a series of memos to Cheryl Barr, eloquently saying:

"I don't want to leave. I am being forced out because I am opposing discrimination. This is retaliation. What Allen VanDeventer has been doing to me in August and September is

absolute retaliation.

"It's not fair that I am being forced out of this company. Look at my history here. You know, here are some solutions."

Here, she is being faced with a situation, still saying, "Here are some solutions. Let's find a way to solve it."

Cheryl Barr only talks to her about leaving

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harassment complaint against another white male manager, and she is being berated for that by Mike Walker.

She learns that Allen VanDeventer has berated another individual and, in fact, human resources sits on it and doesn't investigate the claim --

ATTORNEY EVANS: Excuse me, your Honor. Again, if this is supposed to be protected activity, she is getting into --

THE COURT: That last statement wasn't relevant, Ms. Bredehoft. What's relevant is what protected activity this plaintiff contends that she engaged in.

But I don't think that ultimately is going to be the focus of the attention. The question is: Was there any retaliation actually connected to it, and did it -- was there constructive discharge as the Court has defined it?

Address yourself to those points. Take about five minutes and finish up.

ATTORNEY BREDEHOFT: I believe that it was, your Honor.

In any event, Celindah Grier finds out a number of things. But meanwhile she is now at home. They don't even want her to be at work any more. They want her to leave.

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March of 1994?
A. Yes, I did.
Q. To whom?
A. To Mike Walker.
Q. Did you complain to anyone else?
A. At that time?
Q. Yes.
A. On one of the occasions, there were actually two complaints. Both were with Mike Walker. On one of them I did go to the human resources department manager, and carried that complaint down.
Q. Okay.
Did you make any complaint of discrimination in May or June of 1994?
A. Yes, I did.
Q. To whom?
A. They would have been made to Mike Walker and Allen VanDeventer.
Q. Now, how did Mr. Walker and Mr. VanDeventer react to your complaints of discrimination in May and June of 1994?
A. They were very angry that I had made the complaint, and said that -- I know I can't tell you what it is, but the issue that I was addressing, they said that I had better fix it, that that was my responsibility to

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fix, and they didn't want to hear any more complaints about it.
Q. Did Mr. Walker use any specific terms to you or use any profanity when you were complaining?
A. Not at that time.

Q. Okay.

Now, I am going to move you forward --

A. I'm sorry, he did. He basically -- I guess I don't really think of it as profanity. He said that my complaints were bullshit and that I was responsible to fix it. He would not tolerate any such complaints on his project, and that I better get it fixed.

Q. Now, I am going to just move you quickly ahead to the Summer of 1994. Did there come a time that you took a medical leave?

A. Yes, I did.

Q. And was that -- what period of time was that?

A. I think I went out on June the 20th of 1994.

Q. And when did you return?

A. I returned on August the 8th of 1994.

Q. When you returned on August 8, 1994, what did you find?

A. Well, there was evidently a new organization in the works for Mike Walker's Federal Systems Organization and Mike asked me to take a look at a memo that he was

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Mr. Walker said to me that Allen VanDeventer had contacts at the FAA, but he did not have any background in information engineering or business process reengineering; and that's essentially why he asked me to get informed to deal with that aspect of it, which was the only task that was opened up in the beginning of the project.

BY ATTORNEY BREDEHOFT:

Q. Now, did there come a time -- what, if anything, did Mr. Walker say to you in the Winter to Spring of '94 about Mr. VanDeventer's management abilities?

A. He indicated --

ATTORNEY EVANS: Objection, your Honor.

This is irrelevant.

THE COURT: I beg your pardon.

ATTORNEY EVANS: This is irrelevant.

THE COURT: I think I've already ruled on this.

ATTORNEY BREDEHOFT: I don't think so, your Honor. It goes to Mr. Walker's knowledge of Mr. VanDuersen's management.

THE COURT: Come to the podium -- to the bench, rather.

(Thereupon, a discussion at side bar was had on the record as follows:)

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THE COURT: What is the purpose of the evidence, what Mr. Walker told her about Mr. VanDeventer's abilities?

ATTORNEY BREDEHOFT: Mr. Walker acknowledged that Mr. VanDeventer had management problems, which is directly relevant to the entire area of August and September, when Ms. Grier was going to Mr. Walker and complaining about Mr. Walker's -- Mr. VanDeventer's treatment.

THE COURT: Why isn't that the validity of the underlying complaints?

ATTORNEY BREDEHOFT: It is a party opponent admission.

THE COURT: He is not saying it is hearsay. He is saying it is irrelevant.

Why is it -- is it relevant whether Mr. VanDeventer was or wasn't having management problems?

ATTORNEY BREDEHOFT: Yes, your Honor.

THE COURT: Why?

ATTORNEY BREDEHOFT: In my view, your Honor, because when Ms. Grier is going to Mr. Walker and complaining about the treatment of herself by Mr.

VanDeventer, Mr. Walker is already on notice that there are problems, and should be -- even if he doesn't think it is discrimination or retaliation, he is already on notice

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that there are problems in the past, and that he should be dealing with this. And it goes to the reasonableness of his response.

THE COURT: That is not the point. The reasonableness of his response is not an issue. At least I don't see that it is an issue.

Why is it an issue as to whether they responded?

ATTORNEY BREDEHOFT: Because it goes to motive and intent. If Mr. Walker knew Mr. VanDeventer had management problems, and Ms. Grier goes to him and complains that he is treating her poorly, he says, "Tough luck; you work that out," when he already knows there is an a background of that, it goes to his intentional retaliation of Ms. Grier.

THE COURT: Mr. Evans?

ATTORNEY EVANS: Your Honor, first of all, we have a 404 problem.

Second of all, you are absolutely right, failure to act is not an adverse retaliatory act.

THE COURT: You mean, it is not an adverse employment act?

ATTORNEY EVANS: Thank you. It is not an adverse employment act.

THE COURT: She is saying she is offering it

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to show his motive and intent --

ATTORNEY BREDEHOFT: It is a 404 issue.

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THE COURT: Only one lawyer at a time.

ATTORNEY EVANS: Yes. I agree it is a 404 issue. He can't, you know --

THE COURT: Well, that's why it would be admissible, if it was 404(b). It is admissible for purposes of motive and intent.

ATTORNEY EVANS: The motive and intent she is talking about now, management problems first with the FAA --

THE COURT: Let me just ask you, Ms. Bredehoft, what motive and intent are you referring to?

ATTORNEY BREDEHOFT: Mr. Walker's motive and intent.

THE COURT: In doing what?

ATTORNEY BREDEHOFT: In how he handles Ms. Greir's complaint to him about Mr. VanDeventer in August and September.

THE COURT: How does he do that?

ATTORNEY BREDEHOFT: A number of different ways, none of them going back to talk to Mr. VanDeventer; one of them, telling her --

THE COURT: Isn't that getting into the validity of the underlying complaint?

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You have to avoid nodding and shaking your head. You have to maintain a dispassionate nature.

ATTORNEY BREDEHOFT: No.

THE COURT: Doesn't that relate to the condition of whether Mr. VanDeventer was a good or bad manager?

ATTORNEY BREDEHOFT: It doesn't matter whether he is a good or bad manager.

In this case, it goes to the fact that Mr. Walker has already given an opinion that he believes Mr.

VanDeventer has management problems. But now, after she has complained of discrimination, now she is complaining of retaliation.

THE COURT: The failure of Mr. Walker to address that is not an adverse employment action.

ATTORNEY BREDEHOFT: Your Honor, the fact that he doesn't stop it is retaliation. And I think that you have to, as your Honor has already acknowledged, on adverse --

THE COURT: It may go to constructive discharge, but that doesn't mean --

ATTORNEY BREDEHOFT: It also may be part of adverse employment action.

Remember, your Honor's instruction last time and what your Honor said on Friday, it may not be -- one

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particular event may not be an adverse employment action, but if you have a combination of things --

THE COURT: That is for constructive discharge.

ATTORNEY BREDEHOFT: It is also true for adverse employment action, when he is not giving her the assignments.

THE COURT: But that is not what this is about. What you are talking about now is whether VanDeventer was a good or wasn't a good manager. That's not relevant.

ATTORNEY BREDEHOFT: I am not admitting it for the purpose of whether he was or was not. I am admitting it for the purpose that Mr. Walker acknowledged that he wasn't, which then is relevant in August and September.

THE COURT: One last time, Mr. Evans.

ATTORNEY EVANS: Your Honor, it is just not

relevant, because failure to address its validity - I mean, maybe he wasn't a good manager at FAA, but maybe Mr. Walker was a real good manager, did a heck of a job.

And whatever he did, and saying with Ms. Grier, because maybe he concluded Ms. Grier was right, and not VanDeventer.

That is not the issue. The issue is whether

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or not there was retaliation.

THE COURT: It is clear to the Court that whether or not Mr. VanDeventer was a good manager or not is not relevant.

It is also clear to the Court that whether the company did the right thing with respect to replacing him or removing him or responding is also not the issue.

What is the issue is whether there was retaliation. Now, it is important to the defendant -- or the plaintiff to show that he made life miserable for her, isn't it?

ATTORNEY EVANS: After August 4th.

Your Honor, you've made a very specific ruling. You ruled specifically that his behavior before August is not relevant.

THE COURT: I don't see it is relevant here. I am going to sustain the objection now. But I will permit you to revise it.

Ms. Bredehoft, if for some reason you can persuade me later on, as the case may develop, that Mr. Walker's motive and intent about not replacing Mr. VanDeventer or not moving her or whatever is an important factor, I don't see it now.

Now, I do see that if he did certain things, VanDeventer did certain things, after August 4th, that

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made life difficult for her, that's part of the mix of constructive discharge, and you may show that.

ATTORNEY BREDEHOFT: Thank you, your Honor.

THE COURT: Let's proceed.

(Thereupon, the discussion at side bar on the record was concluded)

(Open court)

THE COURT: All right, you may proceed.

ATTORNEY BREDEHOFT: Thank you, your Honor.

BY ATTORNEY BREDEHOFT:

Q. Ms. Grier, when you became -- when you became the deputy general manager in early March of 1994, where was Mr. VanDeventer on the organizational chart?

A. He was the member of the staff reporting to Dale Hillyer in the Orlando office.

Q. Now, with respect to an organizational chart, as of early March of '94, when you become deputy general manager, will you please explain to the jury what that means in terms of the Federal Systems Organization that you were in?

A. At that time, the Federal Systems Organization was comprised of three divisions. I was -- I had been a division manager and was promoted up to deputy general manager, although I retained some responsibilities at the division management level.

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One of the other divisions was located out of our Boston office, and the third division was essentially where all of the AFCIMS Project was assigned within that division.

Q. When is the first time that the AFCIMS project began having Executive Information Systems components to

it?
A. At the time when I went out in June, that task had not been started yet. I believe that sometime in July, when we got some additional money, that Mr. Ford, who was the customer, authorized some preliminary work to that task at that time. And so a very small effort was started, evidently just prior to my return in August.
Q. Now, on August 8, 1994, what is your position as an engineer in Titan Corporation?
A. I was a chief systems engineer.
Q. Please describe -- or describe to the jury what that means.
A. In our career paths, you start at a junior level and you work up; and each level requires a certain amount of qualifications, experience and skills.

The very top level of the career path is the chief level. And so I was at the chief level of the engineering career paths. There were, I think, certainly less than half a dozen of us in the company.

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systems engineers?
A. No, they are not.
Q. All right.

Now the third page of this, you indicated, was just specifics and organizational chart on AFCIMS, correct?

ATTORNEY EVANS: Objection, it's a leading question.

THE COURT: It is leading. I will sustain it on that basis.
BY ATTORNEY BREDEHOFT:
Q. The third page, if you can go to Plaintiff's Exhibit Number 155.
A. (Complied)

Q. Will you please explain to the jury what the significance --

ATTORNEY BREDEHOFT: I am trying to figure out how to ask this.

BY ATTORNEY BREDEHOFT:

Q. Were there any other organizational charts as of August, 1994, or August 9, 1994, relating to the AFCIMS Project other than this third page of Plaintiff's Exhibit Number 155?

A. Not to my knowledge.

Q. All right.

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Now, where is Allen VanDeventer on this AFCIMS Project?

If you can tell the jury -- and if you want to hold it up for the jury and explain it and point to it, if you want to take it out of the booklet, that might make things easier.

A. You probably can't read it, but basically it, at the very top is the overall project management. The first name under that is Mike Walker.

Mike Walker was officially, from the government and contract perspective, the program manager of the AFCIMS Project.

Right under that is the name Allen VanDeventer, and so he is associated with Mike in the overall project management.

That is a change from everything that had occurred prior to that. He had not been involved --

ATTORNEY EVANS: Excuse me, your Honor, lack of foundation. There's no testimony about what Mr. VanDeventer's position was prior to whenever this document was prepared.

THE COURT: I think there isn't a foundation

at this time, but I am going to overrule the objection and permit it.

Let's move along.

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ATTORNEY BREDEHOFT: Thank you, your Honor.

THE WITNESS: The project has now been split into three --

ATTORNEY BREDEHOFT: Let me stop you so we can go back.

BY ATTORNEY BREDEHOFT:

Q. Had Allen VanDeventer been holding that position at AFCIMS on August 8, 1994?

A. No, he had not.

Q. Who had?

A. Essentially, I had.

Q. When you say "essentially," what do you mean by that?

A. Well, prior to that, the only task that had been opened up was the work that we were doing, business area analysis interviews, data collection, all aspects of the business reengineering work that was going on, essentially, out of the Reston office.

There was no work unique to the Orlando office or the area that Allen VanDeventer was supposed to manage, which was the development of the EIS system.

And although there were people from the Olando office who did work on this business area analysis, they were not leads in that area, with, perhaps, the exception of Carl Hurdleman, who was participating

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Q. When did you have these conversations and what was said?

A. It was the second or third day, I went in. I said --

THE COURT: Second or third day when?

THE WITNESS: Of when I returned. This would be -- I'll put it in the first week I had returned, in August.

THE COURT: All right.

THE WITNESS: I went in to Mike and I said:

"What exactly are you planning for me to do?

You know, what is it specifically I have in this assignment?

But, you know, I have been the only person that's been involved from the beginning in leading most of this work. We are faced with a deliverable for the end of Phase 1 coming up."

And so I just was curious as to what was kind of going on, what was the status of things, and, you know, where we were going, and how I could get back involved in what was taking place."

Mike indicated to me, he stated that Allen did not want me to be in any kind of a leadership role on the project, and so he thought the best thing for me to

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not get along with me. He didn't want me on the project. He considered me noncooperative and did not want me associated with the project.

Q. Did Mike Walker tell you why Mr. VanDeventer felt that way or whether Mr. VanDeventer communicated that to him?

A. He didn't say whether Allen had.

He said at the time that he said -- made the statement that Allen didn't want me. He said:

"You have just been -- you have made too

many complaints about him. You have been -- you have not cooperated with getting him incorporated on the team, in getting everybody to like him and work well with him."

Q. All right.

And what, if anything -- what, if anything, had you complained about were Allen VanDeventer's problems with the program?

A. Well, clearly, he didn't know anything about business reengineering, and I said I was concerned about that at the time.

THE COURT: Is there an objection?

ATTORNEY EVANS: I don't think so, your Honor.

THE COURT: All right, proceed.

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My concern was, since I had been on --

ATTORNEY EVANS: Excuse me, your Honor. I think she has answered the question, and now she is going on to some nonresponsive point.

ATTORNEY BREDEHOFT: I don't agree. She is telling what she was saying to Mike Walker. The August meeting is very relevant. What she says and how he responds is very important.

ATTORNEY EVANS: Now she just told us what he said, what she said.

THE COURT: She is going on. Let's see if we can move things on.

Next question, Ms. Bredehoft.

BY ATTORNEY BREDEHOFT:

Q. How long did the August 19th meeting last with Mike Walker?

A. An hour and a half.

Q. Please tell us what transpired in that meeting,

what you said to him and what he said to you.
A. I am going to take a minute and collect my thoughts.

ATTORNEY BREDEHOFT: Take a drink of water with it, while you are doing that.

THE WITNESS: There were -- and I am going to try to summarize rather than go, "he said, she said," I

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am going to try to make the major points here.

There were three topics, major topics that I wanted to discuss.

The first one was the concern for the project, and what was going on in the project. The second one was directly in response to Mike's direction to me to make an assessment of Ron; and also, he had asked me, also, about Mr. Stark subsequently.

And the third category was me and what I was perceiving was going -- was, I was very concerned about how I was being treated and how I felt that that treatment also related to potential failure for us on the project. So, they were related in that respect.

Mike agreed with me as to my assessment of the problems on the project.

He was also very concerned that we were not going to meet our deliverable, and he agreed with my statements about the outline and the direction that Mr. Harris was giving the team.

He -- we then talked about Mr. Harris, and Mike specifically told me at that meeting that the reason that they had hired Ron -- and it had been done very quickly -- he explained the circumstances about meeting him in a casual situation, actually on a smoking break. It had not been an advertised position.

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But when Mike and Allen met Mr. Harris at the smoking dumpster and chatted with him about what he was doing, and he was talking about BPR, Allen wanted very much to hire Mr. Harris, specifically so that he would not be -- he, Allen, would not be dependent upon me to do this huge effort of work, because Allen did not want me on the project.

And I asked about that.

And Mike specifically said that Allen didn't want me on the project because I had complained about the way he treated women --

ATTORNEY EVANS: Excuse me, your Honor --

THE WITNESS: -- and showed preferential treatment.

THE COURT: Just a moment, when an objection is made.

THE WITNESS: I didn't know there was an objection. I didn't hear it.

ATTORNEY EVANS: We discussed this yesterday for a long time. My objection is asked and answered. This is cumulative testimony.

THE COURT: All right, I will overrule the objection.

Proceed.

BY ATTORNEY BREDEHOFT:

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Please continue.

(Pause)

THE COURT: Proceed, Ms. Grier.

THE WITNESS: I am trying to think where I was interrupted, your Honor. I am really trying to keep this narrow.

At that point, Mr. Walker emphasized that --

ATTORNEY BREDEHOFT: I'm sorry, you didn't get to finish the last sentence.

THE COURT: Let her just finish the answer. Don't interrupt her.

Go on, Ms. Grier.

THE WITNESS: Mike's response to my -- I was obviously surprised, and I expressed concern that I was the only person who knew anything about the early part of the project, and that was an essential part, or most of the Phase 1 report. And I didn't know how we were going to be responsive if I wasn't allowed to participate or have a role.

And he stated to me that he very definitely wanted me to have a role. He agreed that I was the only one that had the perspective on how the project had gotten started and proceeded, until I had left.

He was very concerned about Ron Harris' statements to not only me, but evidently a number of other

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people that he said he had heard from, that nothing had been done or accomplished before Ron Harris came on board in July, and he was going to straighten that out and straighten out those egos.

But my role was definitely going to have to be in a nonmanagement, non lead type of effort, and that I was going to have to figure out how to support the Phase 1 report and get that information across to the others.

And he accepted my substitute outline as the appropriate outline for the project, and said that I could participate, he needed me to get involved and support the others, get them up to speed and assist in getting the Phase 1 report done; but under no circumstances could I be

in any kind of a leadership role.

The third area that I then brought up was how I had been treated. And I discussed my job description with him that I had left with him before I left, as his deputy, and the roles and responsibilities of that job description, which included taking leadership roles on projects.

And I asked him whether he agreed with the job description, and if not, what were his problems with it, how did he want that changed. Because that was supposed to be the basis of my MBO, which I still had not

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received the letter on.

And I ended with asking him:

"How do I know, how can I know what it is you are going to judge me on?

I am being treated very rudely by the staff. They are responding to statements that "are being made by Ron Harris and Steve Stark and other newcomers, as though I am just worthless, you know, not a participant here and not worth even listening to.

I don't know how I can accomplish what you have just asked me to do, if I don't have the respect of the people on this project and they don't have an understanding of what I did on this project before they came on board."

I said:

"So, I really need to know what is the criteria that you are going to judge me by, so I will know how to represent, in order to succeed."

THE COURT: Does that complete your answer?

THE WITNESS: No.

Mike's response to that was:
"I know this is not what you want to hear Celindah. I can't really tell you. I

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"really don't know."
That ended the meeting. He walked out of my office.
BY ATTORNEY BREDEHOFT:
Q. Now, I am going to ask you to go back to the part you were testifying about before there was as objection. You testified, you were testifying about the reasons why Mike Walker said Allen VanDeventer didn't want you on the project.
Can you complete your answer? You started with the treatment of women and the preferential, and that is where you had to stop.
A. Yes. It was the treatment -- Allen was upset because I had complained about his treatment of women and his obvious preferential attitude and treatment of the men on the project before in the Orlando office.
Q. Now, at the time of the August 19th meeting, what, if anything, did you say to Mike Walker about leaving Titan?
A. When I was discussing -- that was in the context of when I was discussing how I was being treated, you know, I just said:
"Look, something is definitely going on here. I have been with this company for twelve years, and for twelve years I have had the

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Let's proceed. Let's do it quickly.
BY ATTORNEY BREDEHOFT:

Q. Please continue?
A. Mr. Nelson said I would have opportunity to go over specifics at a later time, but he wanted to get to the bottom line, and suggested that I go to the last two or three charts that were in the copy that he had received.

And I said:

"That's going to be very difficult for me to discuss, without having presented my, all of the materials in advance."

And he said:

"I understand. Just do the best you can. I really need to understand the points that you are making in these last three charts."

So, I said I would try to do that.

And he said, "You know" -- again, he said, "I'm sorry, but I really have to leave quickly, so just tell me the bottom line."

And I started to discuss one of the charts, which was a summary related to my complaints of discrimination.

He said:

"We all understand what your position

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"has been, but the company feels that they have done everything they need to do."

And I then attempted to go back and address what was specifically happening to me as a new, new category, and --

ATTORNEY EVANS: Your Honor, again, this is --

ATTORNEY BREDEHOFT: Your Honor, she has got to be able to cover this.

THE COURT: I am going to take this up out

of the hearing of the jury.

You may pass your books to the right. During the luncheon recess, refrain from discussing this matter among yourselves or with anyone.

Ms. Grier you may step down. You may not discuss your testimony with anyone while you on the stand.

(Witness stood aside)

THE COURT: The court security officer will maintain these secure. It is now 12:20. We will reconvene at quarter to 2:00.

All right, you may follow the court security officer out.

(Jury excused at 12:20 p.m.)

THE COURT: Ms. Bredehoft, you contend that Mr. Nelson's saying he has only fifteen minutes is an act

November 26, 1996, Page 140, Joint Appendix 05054

of retaliation?

ATTORNEY BREDEHOFT: Conscious disregard for her rights. She is complaining of discrimination.

THE COURT: If that is your conscious disregard, it will not survive a Rule 50.

ATTORNEY BREDEHOFT: There are number of conscious disregards. There are many elements of it.

On top of that, not letting her go through and fully relate the retaliatory conduct that happened in August and September --

THE COURT: She is not going to repeat all of that. You have just taken her through all of that. She is not going to go through and use this as an opportunity to say, "Nobody would talk to me, and they took me off this."

That's all been said. It's not going to be repeated. Is that clear?

ATTORNEY BREDEHOFT: Yes, your Honor.

THE COURT: All right.

ATTORNEY BREDEHOFT: The point is, she doesn't get to say all that she want to say. She wants to talk about it.

They say, "No."

She needs to be able to testify --

THE COURT: Just ask her: Did you have an

November 26, 1996, Page 141, Joint Appendix 05055

opportunity to tell them?

She says, "No." Let's go on.

You know, Ms. Bredehoft, I understand -- and Ms. Grier, you as well -- that you have a difficult time saying everything you want to say, but we really do have to move it along.

ATTORNEY BREDEHOFT: I am trying, your Honor. As you can tell, my client is having a great deal of difficulty being able to express herself, and I am doing the best I can. But we need to air this. The Court has already ruled --

THE COURT: All that she is going to say is she didn't have, she wasn't given an opportunity to air her complaints about retaliation; is that right?

ATTORNEY BREDEHOFT: Well, she is going to say she wanted -- she said, "I want to talk about these, these acts that have happened to me in the last two months."

And he said, "No, we have done everything we are going to do."

And then he turns it over to Cheryl Barr, and then we get into the events that transpired after this meeting.

THE COURT: Which are?

ATTORNEY BREDEHOFT: That's the, you know,

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November 26, 1996, Page 142, Joint Appendix 05056

"You have to leave, you know, we are not going to address these things."

They take her completely off work. They put her on an administrative overhead number. She is now at home, not even -- she is working out of the office rarely. She is communicating with Cheryl Barr. She is communicating with Mr. Knauf.

THE COURT: What we are going to have to avoid are these long narratives by the witness. Ask your questions pointedly, directed at what's relevant. Get the answer, and let's move on. This matter, all of this could have been obtained in much less time.

So, you may ask her:

"Did you express, did you express your views about what had been happening to you in August and September?

"No.

"Why not?

"I wasn't given an opportunity."

Next question. Move on. That takes about five seconds instead of five minutes.

So, we have got to move on.

Yes, Mr. Evans?

You don't have any objection to the question about whether she was given an opportunity to state? I am

November 26, 1996, Page 143, Joint Appendix 05057

going to let her repeat what they all were.

ATTORNEY EVANS: I agree, if she feels she wasn't given sufficient time, she can say that.

But, what I also want to note for the record is, what she is now saying and what she just said and what counsel just proffered what she is going to say, the big

failure is, there is a problem, a failure to address --

THE COURT: We will deal with that at the Rule 50 motion. That will not be a basis for constructive discharge, the refusal to address the issues.

In fact, one of the principal issues -- and this is, I mean, it goes both ways, Ms. Bredehoft and Mr. Evans, it goes both ways.

Some of her complaints, a jury has found, are invalid. Another complaint that she helped with, I think some other person, did prevail in court.

This jury isn't going to know either of those, and we are not going to spend any time -- I am going to tell them again, if it's necessary, in the course of the trial, and I'll certainly tell them at the end, that the validity or invalidity of any claims of discrimination made by the plaintiff about herself or anyone else are not relevant in this case.

ATTORNEY EVANS: I agree, your Honor.

The only thing I would like to reiterate,

November 26, 1996, Page 152, Joint Appendix 05066

Bring the jury in, please.

(Jury impaneled at 1:52 p.m.)

THE COURT: Ms. Grier, you may resume the stand.

(Witness resumed stand)

THE COURT: You will recall, you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: All right, Ms. Bredehoft, let's complete the direct examination now.

ATTORNEY BREDEHOFT: Thank you, your Honor.

THEREUPON, CELINDAH J. GRIER, previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Continued)

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BY ATTORNEY BREDEHOFT:
Q. Ms. Grier, I would like take you back to the September 29th briefing. What was the final thing that you said with respect to your treatment over the past two months?
A. I said that it had been intolerable, and that if the company was going to take the position that they weren't going to listen or hear what that treatment had been or take any action, then I guess what they were telling me was that I would have to work for a different kind of company.

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Q. Okay.
ATTORNEY EVANS: Your Honor, I would move to strike the answer. The issue of the details of her complaint and the validity or invalidity of what she is saying is not at issue.
ATTORNEY BREDEHOFT: I don't agree. This is the retaliation aspect.
THE COURT: Well, it's true, what Mr. Evans said there is true.
You say retaliation, Ms. Bredehoft. I have already ruled about what the parties can show about the failure to address, and I am going to instruct the jury at the appropriate time that the failure to address, standing by itself, even if it is shown, is not constructive discharge.
Her subjective beliefs about whether things were intolerable are also not the standard. The standard is one of objective. So, let's move on. I think what you intended to elicit is she complained about her treatment of herself.
Now, you can elicit what the response was, and let's move on.

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BY ATTORNEY BREDEHOFT:
Q. What was the response?
A. I was told that I should contact Cheryl Barr, and

November 26, 1996, Page 154, Joint Appendix 05068

that she would -- Marsh Nelson designated her as the person that I should deal with in following up from the meeting, and that she would be my point of contact for further discussions, and the meeting was concluded, essentially --
Q. Okay, now, let me just stop for a moment.
What, if any, computer equipment had you been given in August and September of 1994 to effect the work on the AFCIMS Project?
A. I had not been given the computer that was needed to do the work that I was doing.
Q. And what is the significance of not having the computer?
A. Well, it essentially rendered me incapable of performing business area analysis and the modeling, which was my area of expertise. It effectively excluded me from doing that work.
Q. Did you ask Mike Walker for a computer?
A. Repeatedly.
Q. What, if anything, did Mike Walker say?
A. He said that there was no money in the budget for it.
Q. Did you have my reason, or see any reason to lead you to believe that was false?
ATTORNEY EVANS: Your Honor, what her

November 26, 1996, Page 185, Joint Appendix 05099

He was telling me I could have a title back.
And I asked him, "Exactly what does that

mean?" What was I going to do?

The deputy general manager position was an overhead position and I knew that there was no money for that, so what was I going to charge my time to? And what was I going to work on?

Ed said --Mr. Knauf said, "I will make money available for your position as deputy general manager."

And I said:

"Ed, you and I both know that can't last forever. I have to have substantive work to do. There isn't enough money for me to bill 100 percent direct.

"I have never been 100 percent direct. I have never been a totally administrative person. I have here twelve years, always been primarily a technical person working on projects. What am I going to do?"

And he said there was always work coming into the company. He was sure there would be something else. I could work on it, but -- and that I could work some; that Allen said:

"Allen has agreed that there is probably work you can do on the AFCIMS, but it's not

November 26, 1996, Page 186, Joint Appendix 05100

"going to be as the chief engineer, and it's not going to be as the project manager, and it's not going to be any leadership role."

And I said:

"So, essentially, you are taking my position, my level in the company as the chief engineer away from me, and you are saying I can have this title back. But you haven't addressed anything about how I am going to do my job, what I am going to do on a day-to-day basis; much

less, have you even addressed how I was being treated."

And Mr. Knauf said:

"My understanding is that you didn't want to lose your job, and I am telling you, you don't have to lose your job. I am going to see to it that you can come back and you can be my deputy general manager. What you and Mike work out as far as what you are going to do is up to you."

I said at that point:

"Well, I will have to think about that."

But I also wanted to know if the severance that had been -- I had been informed of earlier was still on the table.

November 26, 1996, Page 213, Joint Appendix 05127

accommodate this, and I think we will take a early lunch tomorrow. It will be a bit short, but no need to worry about compensating for it. I can understand. I think 2:30 is fine, and we will do that.

All right, Mr. Evans, are you ready to cross-examine the plaintiff?

ATTORNEY EVANS: Yes.

THE COURT: You may proceed.

THEREUPON, CELINDAH J. GRIER, previously duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY ATTORNEY EVANS:

Q. Good afternoon, Ms. Grier.

Ms. Grier, now, on November 2, 1994, you knew that you were able to continue to work at Titan, right?

A. That's correct.

Q. And did anyone at Titan tell you, you had to leave

the company?
A. Those words were not used.
Q. Do you recollect being under oath another day April 9, 1996, and being asked that question and giving the answer "No"?
A. That's correct.
Q. I want to talk about this --

December 2, 1996, Page 60, Joint Appendix 05451

What do you mean by, 'exchanging "'words'"

Were you having a heated argument?
A. No, no, we were just having a friendly conversation. And during the conversation, Celindah -- excuse me, Cheryl was turned towards Marsh Nelson, and said that Celindah was a troublemaker and that Titan had or was formulating a plan to get rid of her.
Q. And what, if anything, did Marsh Nelson say in response though that?
A. I don't recall Marsh Nelson making any response to that statement.
Q. Did you know who Celindah Grier was?
A. Yes, I did.
Q. And how frequently had you had contact with Celindah Grier over the years?
A. Outside of -- I had been in contact with her about some benefits issues, but I had only met her twice prior to that conversation."

(Thereupon, the reading of the testimony of Greg Monsma was interrupted.)

ATTORNEY BREDEHOFT: This is by counsel for Titan.

(Thereupon, the reading of the testimony of

Appendix B

December 2, 1996, Page 75, Joint Appendix 05466

A. For Titan Corporation.
Q. When were you hired as human resources manager for Titan Corporation?
A. In August 1994.
ATTORNEY BREDEHOFT: Your Honor, I would like to request permission of the Court to be able to ask leading questions of this witness.
THE COURT: All right, you may proceed.
ATTORNEY BREDEHOFT: Thank you.
BY ATTORNEY BREDEHOFT:
Q. Were you present during the September 29th briefing that was requested by Ms. Grier?
A. Yes, I was.
Q. And you received a copy of the briefing, did you not?
A. Yes, I did.
Q. And your perception was that Ms. Grier was complaining about upward mobility --
ATTORNEY MICHELS: Objection, your Honor. We are getting into the specifics of the complaint. That has already been ruled on.
THE COURT: Well, the validity or invalidity of Ms. Grier's claims is irrelevant in this case --
ATTORNEY MICHELS: The perception --
THE COURT: Wait just a minute. I'm not

December 2, 1996, Page 76, Joint Appendix 05467

done yet.
ATTORNEY MICHELS: I'm sorry.
THE COURT: Are you going to do this, instead of Mr. Evans? He gets a rest?
ATTORNEY MICHELS: Yes, I am.
THE COURT: I sustain the objection on the

grounds I previously stated.

Proceed.

BY ATTORNEY BREDEHOFT:

Q. You are aware that Ms. Grier was the highest ranking technical employee at Titan Corporation, are you not?

ATTORNEY MICHELS: Your Honor, relevance, again.

THE COURT: I overrule the objection.

You may answer that question.

THE WITNESS: Yes.

BY ATTORNEY BREDEHOFT:

Q. And during this conference, Ms. Grier made reference to a previous presentation, did she not?

ATTORNEY MICHELS: Objection, your Honor --

ATTORNEY BREDEHOFT: I am not talking about the substance.

THE COURT: Come to the bench.

(Thereupon, a discussion at side bar was had

December 2, 1996, Page 88, Joint Appendix 05480

not?

A. Yes, I said that.

Q. What was the trouble that you perceived Ms. Grier stirring up?

A. She was trying -- she was trying to make issues where there weren't issues, trying to concern people and, I felt, maybe get the company to offer her something because she knew she wasn't going to stay there.

Q. Now, what is it that you were aware of, what facts did you have that Celindah Grier had decided it was time to move on?

ATTORNEY MICHELS: Objection, your Honor, relevance, and again going back to the issue that we discussed.

THE COURT: The question was: What facts did she have to, on which she relied in believing that Ms. Grier wished to move on?

I think you must have misheard that. You object to that?

ATTORNEY MICHELS: I am objecting to it because I think it is going to go into the issue we discussed at the bench conference, your Honor.

THE COURT: I overrule the objection.

You may answer.

THE WITNESS: I don't think it really had

December 2, 1996, Page 89, Joint Appendix 05481

any facts. It was an impression that I got.

BY ATTORNEY BREDEHOFT:

Q. And what facts did you have that Ms. Grier was raising issues with the company?

A. I had been in on the conferences you mentioned and I knew that she was saying that women didn't have an opportunity and these kinds of things, and I didn't have any reason to believe that.

Q. Did you have any reason to disbelieve --

THE COURT: The merits or demerits of that, the merit or lack of merit are not relevant here. Let's proceed.

BY ATTORNEY BREDEHOFT:

Q. Ms. Sundin, you were the manager of human resources for Titan East at the time you made this statement, correct?

A. Titan Systems Group, the eastern portion of it, yes.

Q. And your attitude was that someone who made complaints like you've just described was stirring up trouble?

A. She didn't make any specify complaints. She just

made these vague allegations about people, women not having appropriate opportunity, and there wasn't any evidence of that.

December 3, 1996, Page 107, Joint Appendix 05860

THE COURT: There was never a question of returning. I don't recall anybody testifying about her returning. There was testimony about her staying.

Do I miss something, Ms. Bredehoft?

ATTORNEY BREDEHOFT: She was given an administrative charge number, and not permitted to do any work the entire month of October and four days in November.

THE COURT: That is not leaving the company, Ms. Bredehoft.

You may ask the question.

ATTORNEY BREDEHOFT: It is not serving as deputy general manager, either.

BY ATTORNEY BREDEHOFT:

Q. What would Celindah Grier have been doing with the TEQCOM program?

A. Not very much; they hired a new manager for the TEQCOM division.

Q. What direct billing could Celindah Grier do on November 5, 1994, if she continued as deputy general

December 5, 1996, Page 60, Joint Appendix 06484

through the ones that were specifically testified to in connection with Allen VanDeventer and Mike Walker. Starting in May and June of 1994, Ms. Grier makes a number of complaints.

Now, how do you know that's true?

Because in cross-examination of Mike Walker, I said, "What" -- "You said Celindah Grier is always complaining about something. What was she complaining

about?"

And what did he say? About how they were getting this and we were getting that, and of course the theys and the we's are the Orlando and the Reston office. The we's was the Reston office, all women; the theys was the Orlando office, all men.

And Celindah Grier said specifically, "I am talking about how the women are treated up here."

The next one, August of 1994, after the organizational chart comes out, the organizational chart that she is referring to is the August one, which is Plaintiff's Exhibit 155.

She says, she complains again of discrimination to Mike Walker, and he is not happy with her about that.

And by the way, back when she makes the complaint in May and June, the response that Mike Walker

December 5, 1996, Page 61, Joint Appendix 06485

gives her is, "That's bullshit. You have to fix it. It's your problem."

And so she tries to fix it. She goes out to dinner with Allen VanDeventer. That's something that somebody who is a responsible supervisor tries to do to fix the problem.

"Okay, you are right. There is a problem here. Let's see if we can try to get this resolved."

And he just personally and professionally attacks her.

She complains again when she comes back in August and says, "Look, we've got another discrimination issue."

He says, "I don't want to deal with it."

Then she complains again in, later in August, again to Mike Walker, brings to his attention Luba

Vladavsky's complaints about Allen VanDeventer.

And he said, "Counsel Ms. Vladavsky not to say these things."

That's the response again.

Then the next protected activity is assisting in the sexual harassment, September 24th.

Then the next one, September 29th. Now, nobody disagrees on the September 29th. Clearly, by this time, she's got her slides, she has made a presentation,

December 5, 1996, Page 153, Joint Appendix 06577

on her claim of retaliation, plaintiff must prove by a preponderance of the evidence that she complained of gender discrimination or assisted another in complaining of gender discrimination, that the defendant took an adverse employment action against her after August 4, 1994, and that plaintiff's complaints of discrimination or her assisting another in complaining of discrimination were known to defendant, and that they were the determinative factor in defendant taking the adverse employment actions against plaintiff.

It is not necessary that her complaints of discrimination and her assistance to others were the only reasons, but those must have been a determinative, or "but for" cause of any adverse employment actions.

During the trial, you heard evidence that plaintiff made complaints of gender discrimination while at Titan. This evidence was introduced for the purpose of attempting to show that plaintiff engaged in this form of protected activity.

The validity or invalidity of those complaints is not relevant to this case, and should not be considered by you in determining whether plaintiff was retaliated against by defendant.

Nor should you be concerned with the results

of any investigation of the complaints undertaken by

December 6, 1996, Page 154, Joint Appendix 06578

defendant.

You are also instructed not to be concerned with whether the parties actually reached an agreement to settle this matter.

You may consider the denial of compensation to be an adverse employment action, if you find by a preponderance of the evidence that the determinative factor in the denial of the compensation was the plaintiff's complaints of discrimination. You may not find denial of compensation was an adverse employment action for any other reason.

An adverse employment action is an ultimate employment decision, such as hiring, granting leave, discharging, constructively discharging and compensating.

Failure to believe or address plaintiff's complaints of discrimination are not adverse employment actions. Actions such as rudeness, giving less favorable work assignments or failure to promote, taken by themselves, are not adverse employment actions.

Plaintiff claims that defendant's retaliation in part took the form of constructive discharge. A person is constructively discharged when her employer deliberately makes her working condition so intolerable that a reasonable person would feel compelled to resign.

APPENDIX C - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION FILED NOVEMBER 20, 1996 (J.A. 04711)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 95-900-A

CELINDAH GRIER,

Plaintiff,

v.

TITAN CORPORATION,

Defendant.

ORDER

The matter came before the Court on numerous motions by plaintiff and defendant. Plaintiff's motions included:

1. a motion for a Protective Order;
2. a motion for clarification on constructive discharge;
3. a motion to quash two witness subpoenas or, in the alternative, to exclude testimony; and
4. eight motions in limine.

Defendant's motions included:

1. a motion for partial summary judgment on punitive damages;
2. a motion in limine to restrict plaintiff from alleging or attempting to prove acts of retaliation before September 29, 1994; and

3. twenty one motions in limine.

For the reasons stated from the bench and in this Order:

a. Plaintiff's motion for a protective order is DENIED AS MOOT, the motion having been denied in the November 13, 1996 Order entered by another Court in this division;

b. Plaintiff's motion to quash two witness subpoenas or, in the alternative, to exclude testimony is DEFERRED UNTIL TRIAL;

---

1. This motion was resolved by the Court in its Order of November 15, 1996.

(J.A. 04712)

c. Plaintiff's motions in limine are decided, as follows:

1. motion in limine to introduce defendant's Annual Report for 1995 is DENIED, because the Court concludes that the parties' stipulation to defendant's net worth is adequate in this case and the remainder of the Annual Report is irrelevant;
2. motion in limine to introduce plaintiff's exhibit 140 is DENIED, and plaintiff's request for a special verdict form question on lost and future income damages is DEFERRED TO TRIAL;
3. motion in limine requesting reconsideration of admissibility of certain submissions made by plaintiff to defendant is DENIED;
4. motion in limine to admit prior testimony of Greg Monsma is DENIED IN PART and GRANTED IN PART; the motion is denied as to testmony given in the cast styled Amato v. Titan Corporation, C.A. No. 95-901, and granted with respect to previous

testimony in this case, provided that this prior testimony is otherwise admissible;

5. motion in limine to exclude fact of retrial, as well as findings of the retrial, is DENIED AS MOOT, based on representations by counsel for both parties that they will take steps to avoid any reference to the fact of retrial;
6. motion in limine to admit fact of another employee's retaliation judgment against defendant is DENIED;
7. motion in limine to clarify the admissibility of evidence of other trials against defendant is GRANTED, and evidence concerning other cases against defendant is EXCLUDED; and
8. motion in limine concerning the jury instruction on constructive discharge is DEFERRED TO TRIAL.

d. defendant's motion for partial summary judgment on the issue of punitive damages is denied; but defendant is not precluded from moving for judgment as a matter of law, pursuant to Rule 50, Fed. R. Civ. P., at the appropriate time should circumstances warrant;

e. defendant's motions in limine are decided, as follows:

1. motion in limine to restrict plaintiff from alleging or attempting to prove acts of retaliation occurring

(J.A. 04713)

before September 29, 1994 is GRANTED IN PART and DENIED IN PART; plaintiff may not attempt to prove acts of retaliation occurring before August 4, 1994, though plaintiff may seek to prove protected activity occurring before that date, provided there is record evidence of a causal nexus

between the protected activity and the alleged acts of retaliation;

2. motion in limine to restrict plaintiff from alleging or attempting to prove retaliatory conduct constituting a "continuing violation" under Title VII is GRANTED, plaintiff may not attempt to prove acts of retaliation occurring before August 4, 1994;
3. motion in limine to prevent plaintiff from arguing the validity of plaintiff's underlying discrimination claims is GRANTED, however, plaintiff will be permitted to testify that she made allegations to defendant of sex discrimination by defendant, and plaintiff will be permitted to produce evidence of what, if any, responses were made by defendant to the allegations;
4. motions in limine concerning plaintiff's counsel's improper comments about a witness, and improper jury arguments are DENIED AS MOOT, given counsel's representation to the Court that she will refrain from these improper comments and arguments;
5. motion in limine to exclude evidence of repercussions to Greg Monsma for testifying in this matter are DEFERRED TO TRIAL;
6. motion in limine to exclude improper testimony from plaintiff's daughter is DENIED AS MOOT;
7. motion in limine to exclude evidence of training regarding sex discrimination is GRATED; such evidence is not relevant to plaintiff's retaliation claim, notwithstanding plaintiff's reliance on Spicer v. Commonwealth of Virginia Dept. Of Corrections, 66 F.3d 705 (4th Cir. 1995) (in secual harassment claim, training on discrimination considered in determination of whether employer took remedial measures neccssary to avoid imputing liability to employer for harassment by employees);

8. motion in limine to exclude testimony regarding the circumstances surrounding the independent medical examination is DENIED;
9. motion in limine to exclude evidence of Allen Van Deventer's personal relationship with Luba Vladovsky is

(J.A. 04714)

DENIED;
10. motion in limine to exclude evidence of other employees leaving defendant is GRANTED;
11. motion in limine to exclude defendant's responses to requests for admission is DENIED;
12. motion in limine to exclude personnel files of other employees of defendant is GRANTED, although plaintiff has leave to request permission to introduce them in rebuttal if warranted under the circumstances;
13. motion in limine to exclude plaintiff's complaints of unequal compensation is GRANTED, except that plaintiff may adduce evidence of the MBO, Supplemental Compensation, and UEP to the extent that these forms of compensation constitute damages for constructive discharge and retaliation;
14. motion in limine to exclude testimony from plaintiff regarding derogatory statements made about her by Titan Corporate Officers is addressed in a separate order;
15. motion in limine to exclude evidence read from defendant's 10-K filing is GRANTED because the Court concludes that the parties' stipulation to defendant's net worth is adequate in this case and the remainder of the 10-K filing is irrelevant;

16. motion in limine to exclude plaintiff from testifying as to damages incurred from leaving Titan and accepting other employment is DENIED;
17. motion in limine to exclude testimony of psychological treatment of plaintiff for work-related stress prior to August 4, 1994 is GRANTED, but plaintiff has leave to request permission to introduce such testimony in rebuttal if warranted under the circumstances;
18. motion in limine to exclude testimony of Greg Monsma regarding statements made about plaintiff by Sheryl Sundin is DENIED, given that the statement is a non-hearsay party admission relevant to defendant's intent in plaintiff's constructive discharge claim;
19. motion in limine to exclude testimony concerning the terms of release which plaintiff refused to sign is GRANTED;
20. motion in limine to exclude testimony concerning the cause of and reasons for plaintiff's hospitalization is

(J.A. 04715)

GRANTED;

21. motion in limine to exclude testimony concerning the behavior of Allen VanDeventer and other employees of defendant toward plaintiff if GRANTED IN PART and DENIED IN PART; the motion is granted with respect to behavior before August 4, 1994, and denied with respect to behavior directed toward plaintiff which took place after August 4, 1994.

Appendix C

The Clerk is directed to send copies of this Order to all counsel of record.

United States District Judge
T.S. Ellis, III

Alexandria, Virginia
November 20, 1996